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11

12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

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In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

Chapter 11  
Jointly Administered Under  
Case No. BK-S-06-10725-LBR

16

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
Debtor.

OPPOSITION TO MOTION TO COMPEL HOMES  
FOR AMERICA HOLDINGS, INC. ("HFAH"); ONE  
POINT STREET, INC.; COLT GATEWAY, LLC;  
HFAH CLEAR LAKE, LLC; ST. TROPEZ-HOMES  
FOR AMERICA HOLDINGS, LLC F/K/A RIVIERA-  
HFAH, LLC; ST. CHARLES TOWNHOMES  
PARTNERS, LP; BEAU RIVAGE HOMES FOR  
AMERICA, LLC; ST. CHARLES HOMES FOR  
AMERICA, INC.; RIVIERA-HOMES FOR AMERICA  
HOLDINGS, LLC F/K/A ST. RAPHAEL-HOMES  
FOR AMERICA, LLC; AND MEDITERRANEE-HFA,  
LLC F/K/A HFAH-MONACO, LLC TO COMPLY  
WITH SUBPOENAS FOR PRODUCTION OF  
DOCUMENTS and CERTIFICATE OF SERVICE

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In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

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In re:  
USA SECURITIES, LLC,  
Debtor.

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Affects:  
 All Debtors  
 USA Commercial Mortgage Company  
 USA Securities, LLC  
 USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
 USA First Trust Deed Fund, LLC

Date of Hearing: 02/21/2008  
Time of Hearing: 9:30 a.m.

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1           **OPPOSITION TO MOTION TO COMPEL HOMES FOR AMERICA HOLDINGS, INC.**  
 2           **(“HFAH”); ONE POINT STREET, INC.; COLT GATEWAY, LLC; HFAH CLEAR**  
 3           **LAKE, LLC; ST. TROPEZ-HOMES FOR AMERICA HOLDINGS, LLC F/K/A**  
 4           **RIVIERA-HFAH, LLC; ST. CHARLES TOWNHOMES PARTNERS, LP; BEAU**  
 5           **RIVAGE HOMES FOR AMERICA, LLC; ST. CHARLES HOMES FOR AMERICA,**  
 6           **INC.; RIVIERA-HOMES FOR AMERICA HOLDINGS, LLC F/K/A ST. RAPHAEL-**  
 7           **HOMES FOR AMERICA, LLC; AND MEDITERRANEE-HFA, LLC F/K/A HFAH-**  
 8           **MONACO, LLC TO COMPLY WITH SUBPOENAS FOR PRODUCTION OF**  
 9           **DOCUMENTS AND CERTIFICATE OF SERVICE**

10           Homes for America Holdings, Inc. (“HFAH”), One Point Street, Inc. (“One Point”), Colt  
 11          Gateway, LLC (“Colt Gateway”), HFAH Clear Lake, LLC (“Clear Lake”), St. Tropez-Homes  
 12          for America Holdings, LLC f/k/a Riviera-HFAH, LLC (“St. Tropez”), St. Charles Townhomes,  
 13          LP (St. Charles Townhomes”), Beau Rivage Homes for America, LLC (“Beau Rivage”), St.  
 14          Charles Homes for America, Inc. (“St. Charles-HFA”), Riviera- Homes for America Holdings,  
 15          LLC f/k/a St. Raphael-Homes for America, LLC (“Riviera”), and Mediterranee-HFA, LLC f/k/a  
 16          HFAH Monaco, LLC (“Mediterranee-HFA”) (collectively, the “HFA Entities”) by their  
 17          attorneys, Moses & Singer LLP, submits this opposition (the “Opposition”) to the USACM  
 18          Liquidating Trust’s (“USACM Trust”) Motion to Compel the HFA Entities to Comply with  
 19          Subpoenas for Production of Documents (the “Motion”).

20           **INTRODUCTION**

21           On August 23, 2007, August 24, 2007, and September 6, 2007, the USACM Trust issued  
 22          16 subpoenas to HFAH and certain of its affiliates purportedly pursuant to Rule 2004 of the  
 23          Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In the Motion, the USACM  
 24          Trust seeks to compel compliance with regard to 10 of those subpoenas (the “Subpoenas”). The  
 25          Subpoena issued to HFAH (the “HFAH Subpoena”) was issued by this Court. The Subpoenas  
 26          issued to St. Charles- HFA (the “St. Charles- HFA Subpoena”), St. Charles Townhomes (the “St.  
 27          Charles Townhomes Subpoena”), and One Point (the “One Point Subpoena”) were issued by the  
 28          United States Bankruptcy Court for the Northern District of Texas (collectively, the “Texas  
              Subpoenas”). The subpoenas issued to Colt Gateway, Beau Rivage, St. Tropez Riviera,  
              Mediteranee-HFA, and Clear Lake were issued by the United States Bankruptcy Court for the  
              Southern District of New York (the “NY Subpoenas”). Each of the Subpoenas demanded that

1 the HFA Entities produce a corporate representative for examination as well as produce  
2 voluminous documents.

The Motion should be denied for several reasons. First, with regard to the Subpoena issued by this Court, the documents requested are beyond the subpoena power of this Court. Second, the motion improperly seeks to have this Court enforce Subpoenas issued by courts in other jurisdictions. Third, even if this Court had the power to enforce the Subpoenas, the Motion should be denied because the documents requested are beyond the scope of Bankruptcy Rule 2004, which may not be used to conduct post-confirmation fishing expeditions. Fourth, notwithstanding the deficiencies in the Subpoenas and subject to the objections set forth, the HFA Entities voluntarily complied with each of the Subpoenas. The HFA Entities produced a corporate representative for examination in compliance with the 2004 Orders, and produced nearly five thousand pages of documents. The additional documents requested encompass practically all of the HFA Entities' records. Under the circumstances, the HFA Entities are entitled to a protective order from such unduly burdensome and oppressive requests. Fifth, the USACM Trust failed to fulfill its obligation to meet and confer regarding this discovery dispute, in violation of this Court's Local Bankruptcy Rule 7026(g)(2). Finally, the orders entered by this Court authorizing the USACM Trust to conduct a Bankruptcy Rule 2004 examination of the HFA Entities only authorized the examination of corporate representatives, not the production of documents. Accordingly, the USACM Trust is not even authorized by this Court to seek the documents requested.

## **ARGUMENT**

**I. The Motion Must Be Denied Because The Documents Requested Are Outside The Subpoena Power Of This Court.**

24 This Court only has the power to enforce the HFAH Subpoena, because it was  
25 purportedly issued by this Court. Bankruptcy Rule 2004(c) provides that the production of  
26 documents may be compelled as provided in Bankruptcy Rule 9016. Fed. R. Bankr. P. 2004.  
27 Rule 45 of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 9016,

1 limits the subpoena power of this Court to this judicial district and to places outside of this  
 2 district which are within 100 miles of the place of trial or hearing. Rule 45(b)(2) provides:

3           Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:  
 4           (A) within the district of the issuing court;  
 5           (B) outside that district but within 100 miles of the place specified for the  
             deposition, hearing, trial, production, or inspection;  
 6           (C) within the state of the issuing court if a state statute or court rule allows  
             service at that place of a subpoena issued by a state court of general jurisdiction  
             sitting in the place specified for the deposition, hearing, trial, production, or  
             inspection; or  
 7           (D) that the court authorizes on motion and for good cause, and if a federal statute  
             so provides.

8  
 9 FRCP 45(b)(2).

10           HFAH's principal and only place of business is located in Yonkers, New York. Although  
 11 HFAH was properly served in the District of Nevada, through its registered agent, because  
 12 HFAH has no documents located in the District of Nevada, the documents are beyond this  
 13 Court's subpoena power. *See Ariel v. Jones*, 693 F.2d 1058, 1060-61 (11th Cir. 1982) (upheld  
 14 the quashing of a subpoena for the production of documents served on agent in Florida because  
 15 the agent did not control the documents which were located in Colorado, and the issuing party  
 16 had the ability to obtain the documents through another federal district court); *see also Natural*  
 17 *Gas Pipeline Co. of Am. V. Energy Gathering, Inc.*, 2 F.3d 1397, 1406 (5<sup>th</sup> Cir. 1993) ("[A]  
 18 federal court sitting in one district cannot issue a subpoena *duces tecum* to a non-party for the  
 19 production of documents located in another district."); *Insinga v. DaimlerChrysler Corporation*,  
 20 208 WL 202701 (N.D.N.Y. January 23, 2008) (motion to compel compliance with subpoena  
 21 denied where subpoena was issued by improper court and sought production of documents  
 22 beyond subpoena power of the court). Accordingly, with regard to the HFAH Subpoena,  
 23 because Yonkers, New York, is well beyond the geographical limits of this Court's subpoena  
 24 power, the Motion should be denied.

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1       II.     **The Motion Must Be Denied Because This Court Lacks The Authority To**  
 2       **Adjudicate Disputes Arising Under Subpoenas Issued By Court's In Other**  
 3       **Jurisdictions.**

4              The Motion seeks to compel the production of documents with regard to nine subpoenas  
 5              issued by courts outside of the District of Nevada: 6 issued by the Southern District of New York  
 6              and 3 issued by the Northern District of Texas.

7              Rule 45(c)(2)(B), made applicable by Bankruptcy Rule 9016, provides that when an  
 8              objection to a subpoena is made, the issuing party shall not be entitled to production of  
 9              documents “except pursuant to an order of the court by which the subpoena was issued.” Fed. R.  
 10             Civ. P. 45(c)(2)(B). Therefore, when an objection has been filed, as in this case, only the court  
 11             that issued the subpoena may resolve disputes regarding such subpoena. *Pamida, Inc. v. E.S.*  
*Originals, Inc.*, 281 F.3d 726, 632-33 (8th Cir. 2002) (quoting Rule 45(c)(2)(B), determined that  
 12             the district court issuing subpoenas was proper court to rule on the motion to quash subpoenas).  
 13             Accordingly, with regard to subpoenas issued by the United States Bankruptcy Court for the  
 14             Southern District of New York and the United States Bankruptcy Court for the Northern District  
 15             of Texas, the Motion must be denied because it ignores the plain language of Rule 45(c)(2)(B).<sup>1</sup>

16       III.     **The Motion Should Be Denied Because The Subpoenas Seek Documents Outside**  
 17       **The Post-Confirmation Scope Of Bankruptcy Rule 2004.**

18              Even if the documents requested by the USACM Trust were within this Court’s subpoena  
 19              power, which they are not, the Motion should be denied because the documents requested are  
 20              beyond the scope of Bankruptcy Rule 2004, since the information sought would not affect the  
 21              post-effective date administration of the Confirmed Plan.<sup>2</sup>

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 25       <sup>1</sup>       Moreover, even if this Court could enforce the Texas Subpoenas, which it cannot, no  
 26              documents are located in the Northern District of Texas. The documents requested are located in  
 27              Yonkers, New York, well beyond the Northern District of Texas.

28       <sup>2</sup>       On November 15, 2006, the Debtors filed their Third Amended Chapter 11 Plan of  
 29              Reorganization (the “Plan”). On January 8, 2007, this Court entered an Order confirming the  
 30              Plan and the Plan subsequently went effective. After the effective date of the Plan, the USACM  
 31              Trust sought discovery pursuant to Bankruptcy Rule 2004.

1           While Bankruptcy Rule 2004 allows for extremely broad discovery pre-confirmation, its  
 2 scope post-confirmation is extremely limited. Bankruptcy Rule 2004 provides, in pertinent part,  
 3 that the examination

4           may relate only to the acts, conduct or property or to the liabilities and financial  
 5 condition of the debtor, or to any matter which may affect the administration of  
 6 the debtor's estate, or to the debtor's right to a discharge. . . . In a . . .  
 7 reorganization case under Chapter 11 of the Code . . . the examination may also  
 8 relate to the operation of any business and the desirability of its continuance, the  
 9 source of any money or property acquired or to be acquired by the debtor for  
 10 purposes of consummating a plan and the consideration given or offered  
 11 therefore, and any other matter relevant to the case or to the formulation of a plan.

12           Fed. R. Bankr. P. 2004(b). Once a plan has been confirmed, Bankruptcy Rule 2004's  
 13 scope is limited to administration of the case post-confirmation. *In re Express One Int'l., Inc.*,  
 14 217 B.R. 215, 217 (Bankr. E.D. Tex. 1998) (holding that the moving party may conduct a post-  
 15 confirmation examination of the debtor but only for the limited purpose of discovering whether  
 16 the debtor was setting aside funds for payment of the movant's administrative claim which was  
 17 necessary to complete the administration of the case); *see also In re Cinderella Clothing Indus., Inc.*,  
 18 93 B.R. 373, 379 (Bankr. E.D. Pa. 1988) (holding that a post-confirmation 2004  
 19 examination was appropriate *only* to discover whether the Debtor had the ability to comply with  
 20 the terms of the Plan). Without even stating whether it has a potential claim against any of the  
 21 HFA Entities, the USACM Trust demands massive amounts of documents under the purported  
 22 authority of Bankruptcy 2004, for the sole purpose of investigating potential causes of action.  
 23 This is simply beyond the post-confirmation scope of Bankruptcy Rule 2004. *In re Good Hope*  
 24 *Refineries, Inc.*, 9 B.R. 421, 423 (Bankr. D. Mass. 1981).<sup>3</sup>

25           The court in *Good Hope* addressed the post-confirmation scope of Bankruptcy Rule 2004  
 26 with facts closely analogous to the present facts involving the USACM Trust. In *Good Hope*, a  
 27 post-confirmation Debtor sought to conduct a [2004] examination of E.I. Dupont Company  
 28 ("Dupont"), a post-petition supplier of petroleum products to investigate whether Dupont  
 engaged in unlawful discrimination in sales to the Debtor. *Id.* at 421-22. Although no complaint

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<sup>3</sup>           The Bankruptcy Court in *Good Guy* discussed Bankruptcy Rule 2004's predecessor, Rule 205. The analysis set forth by the *Good Guy* court, however, remains equally applicable.

1 had been filed, the Debtors sought to use Rule [2004] to discover whether there were enough  
 2 facts to support a cause of action. *Id.* at 422. After noting the safeguards provided by the  
 3 Federal Rules of Civil Procedure that are absent in a [2004] examination, the Bankruptcy Court  
 4 held:

5 [Rule 2004] is not intended to give the rehabilitated debtor post confirmation a  
 6 strategic advantage in fishing for potential private litigation. Our basic concept of  
 7 fair play expressed in the constitutional legalese of equal protection and due  
 8 process should require all litigants to use the same discovery and procedural rules  
 when not directly engaged in those activities that call for the bankruptcy umbrella,  
 namely, that collection of activities characterized as the administration of the  
 estate.

9 *Id.* at 423. Similar to *Good Hope*, the USACM Trust has not filed a complaint and is seeking to  
 10 examine the HFA Entities merely to determine whether a colorable claim exists. That is exactly  
 11 what the Bankruptcy Court in *Good Hope* held was an abuse of Bankruptcy Rule 2004 and a  
 12 circumvention of the Federal Rules of Civil Procedure. *Id.*

13 Nevertheless, relying on *In re Daisytek, Inc. et al.*, 323 B.R.180 (N.D. TX. 2005),  
 14 USACM Trust attempts to argue that because the Plan gives it the power to pursue causes of  
 15 action and maximize recovery for the unsecured creditors, the Subpoenas fall within the post-  
 16 confirmation scope of Bankruptcy Rule 2004. *Daisytek*, however, had nothing to do with the  
 17 post-confirmation scope of Bankruptcy Rule 2004. The issue in *Daisytek* was whether the  
 18 Bankruptcy Court had the jurisdiction to grant a 2004 motion post-confirmation. *Daisytek*, 323  
 19 B.R. at 185. In fact, although conveniently not mentioned in the Motion, the District Court in  
 20 *Daisytek* expressly stated that the issue of the post-confirmation scope of Rule 2004 was not  
 21 preserved on appeal because it was not raised in the Bankruptcy Court. *Id.* at 184 n.6. *Daisytek*  
 22 merely stands for the proposition that the court had authority to grant a post-confirmation 2004  
 23 motion, not the scope of that post-confirmation 2004 examination. The USACM Trust's reliance  
 24 on *Daisytek* is misplaced.

25 Because the information sought would not affect the post-effective date administration of  
 26 the Confirmed Plan, the documents requested are beyond the scope of Bankruptcy Rule 2004.  
 27 Accordingly, the Motion should be denied in its entirety.

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1      IV.    **The Motion Should Be Denied Because The HFA Entities Have Complied With The**  
2      **Subpoenas.**

3           On September 6, 2007 and September 12, 2007, pursuant to FRCP 45(c)(2), made  
4      applicable by Bankruptcy Rule 9016, each of the HFA Entities objected to the Subpoenas. There  
5      were numerous grounds for the objection, including, *inter alia*: (i) with regard to the HFAH  
6      Subpoena and the Texas Subpoenas, the examination and documents requested were outside the  
7      subpoena power of the bankruptcy courts issuing the subpoenas; (ii) the examination and  
8      documents requested by the USACM Trust post-confirmation were beyond the scope of  
9      Bankruptcy Rule 2004, since the information sought would not affect the post-effective date  
10     administration of the Confirmed Plan; (iii) to the extent that subpoenas sought the production of  
11     privileged documents or attorney work product (or any similar applicable privilege or doctrine);  
12     and (iv) the document requests were unduly burdensome and oppressive.

13          On September 27, 2007, after consultation with counsel for the USACM Trust, subject to  
14     their respective objections, the HFA Entities produced over 4100 pages of documents. On  
15     October 8, 2007, the HFA Entities produced an additional 663 pages of documents. On  
16     November 7, 2007, the HFA Entities produced Daniel Hayes for examination, which the  
17     USACM Trust conducted. Accordingly, notwithstanding their preserved objections, the HFA  
18     Entities have complied with the Subpoenas. Any documents requested in excess of what the  
19     HFA Entities have voluntarily produced is simply oppressive, unnecessary and beyond the scope  
20     of Bankruptcy Rule 2004.

21          The Subpoenas, all of which are substantially the same, each contained approximately 27  
22     document requests. The requests were so broad that they would have required the production of  
23     essentially all of the HFA Entities' books and records. On November 13, 2007, following the  
24     2004 examination of Mr. Hayes, the HFA Entities responded to the USACM Trust's  
25     supplementary document requests. (Motion, Ex. H) Those requests form the purported factual  
26     basis of USACM Trust's motion to compel. In the November 13<sup>th</sup> letter, the HFA Entities  
27     responded to the various categories of requested documents as follows:  
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- 1        1. Audit Work Papers – HFAH’s auditors, who conducted any audits related to any  
2           loans, transfers and/or advances from any USA Entity to HFAH, are in possession  
3           of all such audit work papers. HFAH does not maintain a copy of such audit  
4           work papers.
- 5        2. Bank Statements of all HFAH-related entities – This request is extremely broad  
6           and HFAH would be required to expend an extraordinary amount of work and  
7           effort in order to compile the bank statements for each HFAH entity over a five  
8           year period. Significantly, the production of the requested bank statements would  
9           not be helpful or productive. Most, if not all, of the information that USACM  
10          seeks would not be found on the HFAH bank statements because USA Entity  
11          advances and/or loans were paid directly to third parties at the closing of the  
12          underlying project. The information requested is included in the general ledgers  
13          and/or journal entries, which will be produced in response to item #3.
- 14        3. Journal Entries, general ledgers, detailed trial balances, etc. – HFAH is gathering  
15          the requested journal entries, general ledger entries and trial balances, which will  
16          be produced as soon as practicable. As noted in response to item #2, bank  
17          reconciliations would have little or no probative information and would be  
18          enormously time consuming and burdensome to locate and produce.
- 19        4. Documents related to Joyce Timberlake’s analysis of advances/loans made by  
20           USA Entities – In analyzing any advances and/or loans made by the USA Entities,  
21          Ms. Timberlake relied upon the loan documents and additional transaction  
22          documents, all of which were previously produced to USACM in response to the  
23          Subpoenas.
- 24        5. Emails, faxes, letters and communications evidencing items 1-4 – HFAH has  
25          previously produced to USACM the correspondence related to the above requests  
18          in response to the Subpoenas.

Motion, Ex. H. With regard to the request for audit work papers, HFAH explained that it does not maintain a copy of such audit work papers. With regard to USACM Trust’s request for bank statements from all of the HFA Entities, HFAH explained the enormous burden that this production would entail. Moreover, HFAH explained how the production of the requested bank statements would not be helpful or productive. The explanation fell on deaf ears. With regard to the documents reviewed by Ms. Timberlake, notwithstanding USACM Trust’s unfounded protestations to the contrary, all such documents were previously produced.

By letter dated December 6, 2007, HFAH explained again to USACM Trust why it objected to the production of documents requested in the Subpoenas, including, specifically, the production of all bank statements during the period from January 1, 2002, through April 7, 2007.

1 (Motion, Ex. J) Significantly, as an alternative, by the December 6th letter, HFAH also offered  
 2 to investigate specific transaction(s) regarding a specific project(s) about which USACM sought  
 3 bank information and agreed to endeavor to find corresponding bank statements. (Motion, Ex. J)  
 4 USACM failed to identify any specific transaction(s) or specific project(s) for which it wanted  
 5 HFAH to locate corresponding bank statements. By letter dated January 25, 2008, HFAH  
 6 reiterated its concerns, again offered to investigate specific transactions and/or projects, and  
 7 offered to make Mr. Hayes available for a continued examination. (A copy of which is attached  
 8 as Exhibit A)

9       In the event this Court determines that it has authority to compel the production of  
 10 documents located outside of this judicial district, and that the post-confirmation investigation is  
 11 properly within the scope of Bankruptcy Rule 2004, given the enormous burden associated with  
 12 the production of bank statements for each HFAH entity over a five year period, and the practical  
 13 reality that such information would be unhelpful and unproductive, the HFA Entities should not  
 14 be compelled to produce such documents. Instead, as HFAH offered on two separate occasions,  
 15 the USACM Trust should be ordered to identify the specific transaction and/or project that it  
 16 would like to investigate. The HFA Entities should be given should be given sufficient time, 30  
 17 days, to comply with any such request.

18       V. **The USACM Trust Failed To Comply With Local Bankruptcy Rule 7026(g)(2).**

19       Local Bankruptcy Rule 7026(g)(2) provides that "Discovery motions will not be  
 20 considered unless a statement of moving counsel is attached certifying that, after consultation or  
 21 sincere effort to do so, the parties have been unable to resolve the matter without court action."  
 22 Similarly, Local Bankruptcy Rule 7007.1 of the Northern District of Texas<sup>4</sup> and Local  
 23 Bankruptcy Rule 7007-1 of the Southern District of New York<sup>5</sup> also require that the moving  
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25       <sup>4</sup> Local Bankruptcy Rule 7007.1 of the Northern District of Texas adopts the local district  
 26 court rule which requires a conference in advance of any discovery related motion practice.

27       <sup>5</sup> Local Bankruptcy Rule 7007-1(a) of the Southern District of New York provides that  
 28 "No discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be heard unless  
 counsel for the moving party files with the Court, at or prior to the hearing, an affidavit  
 certifying that such counsel has conferred with counsel for the opposing party in a good faith  
 effort to resolve by agreement the issues raised by the motion without the intervention of the

1 party meet and confer prior to making a discovery related motion. While HFAH and the  
 2 USACM Trust may ultimately disagree regarding the proper scope of the documents to be  
 3 produced, HFAH received no response to its January 25<sup>th</sup> letter (which was conspicuously not  
 4 attached as an exhibit to the motion), other than the attached motion, contrary to the certification  
 5 of conference attached to the Motion. The local rules require more from counsel. Accordingly,  
 6 the Motion should be denied for having failed to comply with Local bankruptcy Rule 7026(g)(2).

7 **VI. The Motion Should Be Denied Because The Production Of Documents Was Not**  
**Authorized.**

9 On August 17, 2007, the USACM Trust filed motions requesting authorization to conduct  
 10 2004 examinations (the “2004 Motions”). The 2004 Motions only requested an order requiring  
 11 the HFA Entities to produce one or more corporate representatives for examination. On or about  
 12 August 20, 2007, the Court entered the orders granting the 2004 Motions (the “2004 Orders”)  
 13 and the HFA Entities were directed to produce a representative for examination. The 2004  
 14 Orders do not provide for the production of documents. Accordingly, the USACM Trust is not  
 15 currently, nor was it ever, authorized to seek documents from the HFA Entities.<sup>6</sup>

16 **CONCLUSION**

17 Because the Subpoenas are beyond the subpoena power of this Court, and/or were not  
 18 issued by this Court, this Court should deny the Motion in its entirety. Moreover, the HFA  
 19 Entities, having substantially complied with the Subpoenas, are entitled to a protective order  
 20 given the unduly burdensome nature of the document requests. Furthermore, USACM Trust’s  
 21 counsel’s failure to confer with counsel for the HFA Entities is also grounds for denial of the

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25 (continued)  
 Court and has been unable to reach an agreement.”

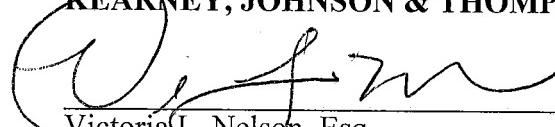
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27 The 2004 Orders cannot be construed as implicitly requiring the production of  
 28 documents. If that was the proper construction of Bankruptcy Rule 2004, then the USACM  
 Trust would not have needed to tailor the 2004 Motions to the relief requested therein. The HFA  
 Entities should not be obligated to do anything more than what the Court specifically ordered in  
 response to very specific motions.

1 Motion. Finally, the Motion should be denied in its entirety because the production of  
2 documents was never authorized in the 2004 Orders.

3 DATED this 19th day of February, 2008.

4 **SANTORO, DRIGGS, WALCH,  
5 KEARNEY, JOHNSON & THOMPSON**



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1                   CERTIFICATE OF SERVICE

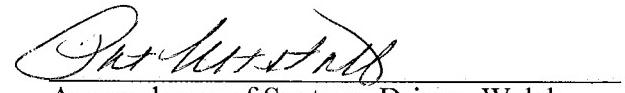
2                   I hereby certify that I am an employee of Santoro, Driggs, Walch, Kearney, Holley &  
3 Thompson, and that on the 19th day of February, 2008, I caused to be served a true and correct  
4 copy of Opposition to Motion to Compel Homes for America Holdings, Inc. ("HFAH"); One  
5 Point Street, Inc.; Colt Gateway, LLC; HFAH Clear Lake, LLC; St. Tropez-Homes for America  
6 Holdings, LLC fka Riviera-HFAH, LLC; St. Charles Townhomes Partners, LP; Beau Rivage  
7 Homes for America, LLC; St. Charles Homes for America, Inc.; Riviera-Homes for America  
8 Holdings, LLC fka St. Raphael-Homes for America, LLC; and Mediterranee-HFA, LLC fka  
9 HFAH-Monaco, LLC to Comply with Subpoenas for Production of Documents in the following  
10 manner:

11                   (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of  
12 the United States Bankruptcy Court for the District of Nevada, the above-referenced document  
13 was electronically filed on the date hereof and served through the Notice of Electronic Filing  
14 automatically generated by that Court's facilities.

15                   (UNITED STATES MAIL) By depositing a copy of the above-referenced  
16 document for mailing in the United States Mail, first class postage prepaid, at Las Vegas,  
17 Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on  
18 the date above written.

19                   (OVERNIGHT COURIER) By depositing a true and correct copy of the above-  
20 referenced document for overnight delivery via Federal Express, at a collection facility  
21 maintained for such purpose, addressed to the parties on the attached service list, at their last  
22 known delivery address, on the date above written.

23                   (FACSIMILE) That I served a true and correct copy of the above-referenced  
24 document via facsimile, to the facsimile numbers indicated, to those persons listed on the  
25 attached service list, on the date above written.

26                    
27                  An employee of Santoro, Driggs, Walch,  
28                  Kearney, Holley & Thompson

# EXHIBIT A

# MOSES & SINGER LLP

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405 Lexington Avenue, NY, NY 10174-1299  
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January 25, 2008

## FEDERAL EXPRESS

Michael J. Yoder, Esq.  
Diamond McCarthy LLP  
Two Houston Center  
909 Fannin, Suite 1500  
Houston, TX 77010

Re: Subpoenas for Rule 2004 Examinations

Dear Michael:

This letter is in response to your letter to me dated January 11, 2008. With regard to the Bankruptcy Rule 2004 subpoenas (the "Subpoenas") issued on behalf of the USACM Liquidating Trust ("USACM") and served on Homes for America Holdings, Inc. and its affiliates (collectively "HFAH"), I note that additional documents were produced, subject to and without waiver of HFAH's objections, on December 14, 2008. We explained to you by letter dated December 6, 2007, the reasons why HFAH objected to the production of all bank statements during the period from January 1, 2002, through April 7, 2007. In the December 6th letter, HFAH also offered to investigate specific transaction(s) regarding a specific project(s) about which USACM sought bank information and agreed to endeavor to find corresponding bank statements. USACM failed to identify any specific transaction(s) or specific project(s) for which it wanted HFAH to locate corresponding bank statements.

Regarding the Bankruptcy 2004 subpoena served on Daniel Hayes ("Hayes Subpoena"), please find enclosed non-objectionable, responsive documents. The documents are Bates labeled DH 000001 – DH 000044. This production is subject to and without waiver of the objections previously served in connection with the Hayes Subpoena. If additional non-objectionable, responsive documents are located, such documents will be produced.

Regarding the continued 2004 examination, Mr. Hayes will not be available the week of February 4<sup>th</sup>, 2008, but he will be generally available the week of February 11<sup>th</sup>, 2008 and the week of February 19<sup>th</sup>, 2008. Please let us know what dates are convenient for you. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

Mark N. Parry

cc: Daniel G. Hayes, Esq.